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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/367,569	12/21/1999	WOLFGANG WEIDNER	826	4514

7590 10/10/2007  
STRIKER STRIKER & STENBY  
103 EAST NECK ROAD  
HUNTINGTON, NY 11743

EXAMINER
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TORRES, MARCOS L

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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10/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/367,569

**Applicant(s)**

WEIDNER ET AL.

**Examiner**

Marcos L. Torres

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-7-07 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 8-7-07 have been fully considered but they are not persuasive.

3. The applicant representative (hereinafter applicant) begins his remarks with a description and explanation of the present application, which is greatly appreciated. Regarding, the applicant argument that the examiner acknowledges the absence of a control element having no function, is not correct. The examiner stated that the combination control element having no function and displaying only operating states is not taught by Tsoi. Examiner apologizes if the office action were not clear enough. Tsoi discloses a mobile phone with programmable or soft keys which change depending on the operating state of the mobile phone, for example a quick look between fig. 5, 8 and 9 it can be distinguished that from the six programmable keys in fig. 5 only four keys are being used, while only one key in fig. 8 and all keys in fig. 9 are being used. Thereby, in fig. 5 and 8, the remaining keys show control elements (soft key) having no functions.

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4. Baals shows a phone device with programmable or soft keys which change depending on the operating state of the phone, since the device only have one display the display is shared between showing the command labels and displaying operating status such confirming a saved entry (see fig. 6 and 7). Tsoi discloses showing operating states in the upper display such as connecting, connected, etc. (see fig. 8 and 9). Since Tsoi is interested in presenting detailed information to user about the states and function of the device (see col. 1, lines 55-60; col. 3, lines 1-10). It would have been obvious to one of the ordinary skill in the art at the time of the invention with the description of Tsoi and Baals that also using the bottom display 76 to display more detailed information about the functions or operating status for the simple purpose of informing the user thereby enhancing user satisfaction and preventing users from entering an improper key. Thereby the combination Tosi and Baals shows predictable results.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsoi US005633912A in view of Baals US005396547A.

As to claim 21, Tsoi discloses a radio apparatus embodied in a radio telephone (see fig. 5, item 62), comprising a display device (see fig. 7, items 74,76); a first control element and a second control element each for selecting and/or activating functions of the radio apparatus which are displayed on said display device (see fig.5, items 82-92; col. 6 ,lines 40-43); said first and second control elements being disposed neighboring said display device so that a local association exists between said first and second control elements and displaying of functions of the radio apparatus on said display device (see col. 2, lines 50-53), wherein a first operating state is provided in which an information about said first operating state on said display device is associated with said first control element, and in which a function for activation of a second operating state

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on said display device is associated with said second control element, wherein said second operating state is associated with said first operating state, and wherein in said second operating state an information about said second operating state on said display device is associated with said second control element, and in which a function for activation of said first operating state on said display device is associated with said first control element (see col. 6, lines 62-65; col. 7, lines 1-6 and fig. 7-13). Tsoi does not specifically disclose wherein said first or second control element having no function and merely the information about said first or second operating state are assigned. In an analogous art, Baals discloses wherein a first and second control element having no function and merely the information about said first and second operating state are assigned (see fig. 6). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to display additional information of the operating state of the device for the simple purpose of informing the user thereby enhancing user satisfaction and preventing users from entering an improper key.

As to claim 22, Tsoi discloses a radio apparatus, wherein said radio apparatus comprises third and fourth control elements for selecting and/or activating functions of said radio apparatus and wherein in said first and second operating states said third and fourth control elements are associated with respective functions of the radio apparatus which remain unchanged upon a change between said first and second operating states (note that in fig. 8 and 9 items 82 does not change; in fig. 7 and 10, item 92 does not change; in fig. 12 and 13 items 82, 84, 86 and 92 do not change).

***Conclusion***

Any response to this Office Action should be mailed to:

U.S. Patent and Trademark Office  
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Or faxed to:

571-273-8300

for formal communication intended for entry, informal communication or draft communication; in the case of informal or draft communication, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcos L. Torres whose telephone number is 571-272-7926. The examiner can normally be reached on 8:00am-6:00 PM alt. Wednesday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-252-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Marcos L Torres

Examiner

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mlt

  
GEORGE ENG  
SUPERVISORY PATENT EXAMINER